

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

GEORGE WISHART,

Plaintiff,

-against-

PETER WELKLEY, et al.,

Defendants.

ANSWER

19-CV-6189

Served Defendants, by their attorney Letitia James, Attorney General of the State of New York, Hillel Deutsch, Assistant Attorney General, of counsel, as and for an Answer to the Complaint filed in the above matter:

1. Deny the allegations of the Complaint which allege in any manner that their actions resulted in a deprivation of the Plaintiff's constitutional rights.
2. Deny the commission or awareness of, or responsibility for, any acts of omission or commission relative to Plaintiff's allegations constituting a violation of any rule, regulation, directive, policy, or statute of the State of New York, or the United States, or the Constitution of either, which would confer jurisdiction upon this Court pursuant to 28 U.S.C. §§1331 and 1343.
3. Deny Plaintiff has alleged facts, actions, occurrences, or omissions sufficient to establish a claim for equitable or monetary relief, or a cause of action against them pursuant to 42 U.S.C. §1983.
4. Deny the allegations of paragraphs 1, 39, 41, 42, 43, 44, 46, 47, 48, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 66, 67, 69, 72, 73, 74, 76, 77, 78,

79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, and 111 of the Complaint.

5. Admit the allegations of paragraphs 7 and 38 of the Complaint.

6. Have insufficient information to admit or deny the allegations of paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 40, 45, 49, 65, 68, 70, 71, and 75 of the Complaint.

7. State that the paragraphs 2, 3, 4, 5, and 6 of the Complaint contain legal conclusions to which no response is needed.

8. Deny each and every other allegation not heretofore admitted, denied, or otherwise controverted.

**AS AND FOR A FIRST, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE:**

9. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted against it.

**AS AND FOR A SECOND, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE:**

10. This action is barred, in whole or in part, by collateral estoppel or res judicata.

**AS AND FOR A THIRD, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE:**

11. The Defendants, at all times relevant hereto, acted without malice and under the reasonable belief that their actions were proper and in accordance with existing law and did not violate any of the Plaintiff's rights.

12. Consequently, the Defendants are entitled to qualified immunity.

**AS AND FOR A FOURTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE:**

13. That this action is barred, in whole or in part, by the Eleventh Amendment to the United States Constitution.

**AS AND FOR A FIFTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE:**

14. Plaintiff has failed to exhaust administrative remedies as to some or all of the allegation of the Complaint.

**AS AND FOR A SIXTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE:**

15. The doctrine of *respondeat superior* does not apply in actions brought pursuant to 42 U.S.C. §1983, and bars relief to the Plaintiff.

**AS AND FOR A SEVENTH, SEPARATE AND
COMPLETE AFFIRMATIVE DEFENSE,
DEFENDANTS ALLEGE:**

16. Plaintiff has failed to request any appropriate or cognizable form of relief.

WHEREFORE, Defendants pray that judgment be entered dismissing the Complaint in all respects and that Defendants be awarded reasonable costs and attorneys' fees and for such other and further relief as may be just, proper, and equitable.

Dated: May 6, 2019
Rochester, New York

LETITIA JAMES
Attorney General of the State of New York
Attorney for Served Defendants

s/ Hillel Deutsch
HILLEL DEUTSCH
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CERTIFICATE OF SERVICE

I certify that on May 6, 2019, I electronically filed the foregoing Answer to Complaint on behalf of Served Defendants with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. Joshua S. Moskovitz
Bernstein Clarke & Moskovitz PLLC
11 Park Place
Suite 914
New York, NY 10007
2. Robert Howard Rickner
Rickner PLLC
233 Broadway
Suite 2220
New York, NY 10279

And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. n/a

LETITIA JAMES
Attorney General of the State of New York
Attorney for Served Defendants

s/ Hillel Deutsch
HILLEL DEUTSCH
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